



Bill Analysis: HB 218 (B. Brown)

TCC Position: Support HB 218 (B. Brown)

TCC Principle: Individual Liberties, Role of Government

- **HB 218 by Betty Brown:** Relating to requiring a voter to present proof of identification.

Placed on Major State Calendar 04/23/2007

Background

HB 218 amends Section 63.001 of the Election Code so that in order to vote an individual must present a voter registration certificate and one form of stated photo identification or two pieces of stated non-photo identification.

Permissible photo identification, of which **one** valid example is required:

- A driver's license or personal identification card issued by the Department of Public Safety;
- A United States military identification card containing the holder's photograph;
- A United States citizenship certificate containing the holder's photograph;
- A United States passport;
- A student photo identification card issued by a public or private institution of higher education in Texas;
- An employee identification card issued by an employer of the person containing the holder's photograph; or,
- A concealed handgun license.

Permissible non-photo identification, of which **two** examples are required:

- a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;
- official mail addressed to the person by name from a governmental entity;
- a certified copy of a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;
- United States citizenship papers issued to the person;
- an original or certified copy of the person's marriage license or divorce decree;
- court records of the person's adoption, name change, or sex change;
- an identification card issued to the person by a governmental entity of this state or the United States for the purpose of obtaining public benefits, including veteran's benefits, Medicaid, or Medicare;
- a temporary driving permit issued to the person by the Department of Public Safety;
- a pilot's license issued to the person by the Federal Aviation Administration or another authorized agency of the United States;
- a library card that contains the person's name issued to the person by a public library located in this state; or
- a hunting or fishing license issued to a person by the Parks and Wildlife Department

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Talking Points and Conservative Note

Voter registration and voting should be accessible, fair, and honest. Measures to make voter registration and ballot access easily accessible to all eligible individuals are numerous. The National Voter Registration Act of 1993 and the Help America Vote Act of 2002 (HAVA) are two examples. Measures to ensure the integrity of elections are scant. Securing the integrity of our elections is synonymous with preserving the constitutional principle of “one man, one vote.”

1. The Legislature has the authority to require voter identification.

The U.S. Constitution, Article I, Section 4, reads:

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof;

Article 6, Section 2(c) of the Texas Constitution reads:

(c) The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence in elections from power, bribery, tumult, or other improper practice.

Article 6, Section 2(c) of the Texas Constitution is unambiguous in allowing for regulations of voting in order to protect the integrity of elections.

Requiring identification at the polls is a minimum standard to protect against “improper practice” that contributes to fraudulent votes and stolen elections.

2. The U.S. Supreme Court recognizes the merits of photo identification for voting.

In removing an injunction against Arizona’s photo identification law, the U.S. Supreme Court’s Per Curiam opinion reads:

Confidence in the integrity of our electoral processes is essential to the functioning of our par-ticipatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Also, Indiana’s photo ID law was upheld by 7th Circuit U.S. Court of Appeals on January 4, 2007. In upholding Indiana’s photo ID law, the U.S. Court of Appeals notes that voters who do not comply with the law by obtaining photo identification disenfranchise *themselves*.

[Source: Purcell v. Gonzalez, U.S. Supreme Court Per Curiam opinion dated October 20, 2006; and Indiana Democratic Party v. Rokita]

3. Courts have held that voter identification laws are *not* an unconstitutional poll tax.

In rulings based on Indiana and Georgia's voter identification laws, the federal District Courts held that the photo ID laws at issue did not create a poll tax. Noting that voters could obtain a voting photo ID free of charge or vote absentee, both courts determined that the plaintiffs failed to prove the additional costs associated with procuring documents to obtain a voting photo ID were sufficiently tied to voting as to constitute a poll tax. Relying on the Supreme Court's decision in *Burdick*, both courts noted "[T]he imposition of tangential burdens does not transform a regulation into a poll tax."

[Source: Senate Committee on State Affairs, Interim Report to 80th Legislature]

4. Fraud in Elections Is a Problem.

Opponents of voter identification argue that photo ID requirements are a solution in search of a problem. That is fallacious reasoning for two reasons:

A. It established that fraud is commonplace.

A 2004 report by the U.S. Government Accountability Office reads: "Our analysis of information from PIN [Public Integrity Section] on election fraud matters showed that U.S. Attorneys and PIN attorneys initiated a total of 61 election fraud matters, or investigations, related to election years 2000 through 2003. Most of the 61 matters related to elections held in 2002. Matters were initiated in 28 states and 1 U.S. territory (the U.S. Virgin Islands) and ranged from 1 to 7 matters per state/territory over the 4-year period."

[Source: Sept 14, 2004 GAO Report, Subject: *Department of Justice's Activities to Address Past Election-Related Voting Irregularities*]

Investigations of Election Code violations are performed in Texas by the Special Investigations Unit of the Office of the Attorney General (OAG) based on referrals from the Secretary of State's Office, district and county attorneys, or citizens.

2006 Voter Fraud Investigations

Disposition	Number of Investigations
Closed/No further action	30
Referred for prosecution	10
Investigation pending as of Sept. 1, 2006	19
TOTAL	59

Figure 3 - 2

Source: Office of the Attorney General, Special Investigations Unit

The Senate Committee on State Affairs Interim Report to the 80th Legislature notes:

...the highest concentration of voter fraud is in the vote-by-mail process. Although there have been three instances of alleged illegal voting, which may

include circumstances preventable by a voter photo ID law, only one of these has been fully investigated and referred for criminal prosecution. If that case is prosecuted successfully, it would bring the total number of illegal voting convictions to three since 2005.

- B. The full extent of vote fraud is difficult to determine due to under-reporting and the lack of will to prosecute. Any lack of news reports or prosecutions of vote fraud only proves under-reporting or a lack of dedication to prosecuting vote fraud, but does not prove that vote fraud doesn't exist. In affirming Indiana's voter identification law (which requires photo id), the U.S. Court of Appeals for the Seventh Circuit states:

"The absence of prosecutions is explained by the endemic under-enforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events)." The Court also wrote, "But that lacuna [that there are no reports of vote fraud in Indiana] may reflect nothing more than the vagaries of journalists' and other investigators' choice of scandals to investigate."

House Bill 218 protects elections by giving prosecutors a clear basis for the prosecution of vote fraud. Furthermore, while there are verification systems in place to catch and prosecute fraud by mail-in ballot, there is no verification system in place to determine that voter John Doe at a polling place is truly John Doe. Former Harris County District Attorney John B. Holmes, Jr. said in a 1996 Houston Chronicle article that vote fraud cases are virtually impossible to prosecute.

[Source: Indiana Democratic Party v. Rokita, U.S. Court of Appeals for the Seventh Circuit, decided January 4, 2007].

5. HB 218 is necessary because identity theft is a problem of enormous magnitude.

According to reports by the Identity Theft Data Clearinghouse (U.S. Federal Trade Commission), Texas ranks fourth in identity theft victims per 100,000 population. In sheer number of victims, Texas ranks second behind California with 26,624 victims of identity theft in 2005.

An April 12, 2007 article in the Nacogdoches *Daily Sentinel* points out that identity theft in East Texas is on the rise. In early April, the Grayson County Sheriffs Department reported the arrest of eight individuals suspected of identity theft. *The Sherman-Denison Herald Democrat* reported on April 6, 2007 that the arrests lead to the break-up of a larger identity theft ring.

The Dallas Morning News notes the following about the December raid of the Swift Packing Plant in Cactus, Texas:

The raids at Swift plants in six states in December resulted in the arrests of nearly 1,300 workers, including 293 at the meatpacking plant in Cactus, Texas, in an investigation that focused on identity theft. Nearly 300 were criminally charged, including 53 in Texas.

If drivers' licenses, social security cards, and immigration papers are so readily forged, it stands to reason that the less secure voter registration certificate (currently the minimal identification requirement for voting) could also be forged and used to vote fraudulently.

6. HB 218 expedites voting because an overwhelming majority of voting-age Texans already have photo identification.

There are more Drivers' Licenses held by the voting-age population than there are registered voters.

The following table compares the number of registered voters against the number of Driver's Licenses and Texas ID Cards:

Registered Voters (Nov, 2005)	12,577,545
Age 18+ Driver's Licenses (fy2005)	14,429,377
Texas ID Cards (2006)	3,960,249

In fiscal year 2005, there were 14.4 million valid unexpired Driver's Licenses issued to Texans of voting age. In November of 2005, however, there were only 12.5 million registered voters. With **1.8 million more Drivers' Licenses held by the voting-age population than there are registered voters**, the argument that the voter ID proposal will be a barrier to voting is a fallacy. Add in another 3,960,249 unexpired Texas Identification Cards in the state as of April, 2006 and 87% of the *total* state population (all ages) has some form of government identification card.

[Sources: Office of Secretary of State and Department of Public Safety Drivers License Division]

7. HB 218 does not create a burden for elderly Texans because an overwhelming majority of Texans 65+ already have photo identification, vote in person, and have the option of voting by mail.

C.S.S.B. 180 requires drivers 85 years of age and above to pass a vision and driving test in order to have their licenses renewed. Clearly, the very need for such a law underscores the fact that a significant majority of senior Texans have drivers' licenses. That is substantiated by records from the Department of Public Safety: 73% of the 79 and older population holds a valid drivers license.

In sampling state election returns in Harris County for the November, 2006 General Election, 125,221 individuals who are sixty-five or older voted last November. Of those, 84.7% voted in person, **and 92.58% already hold a drivers license**, rebutting the presumption and false characterization that the elderly would be unfairly burdened by HB 218.

[Sources: Department of Public Safety Drivers License Division, Harris County Voter Registrar, and Texas State Data Center. See also the Appendices on Pages 10 and 11 for information from Harris and Dallas Counties regarding the elderly, voting, and possession of drivers licenses.]

8. Photo identification requirements are commonplace.

Americans are frequently asked to show identification. Following is a short list of *statutory* identification requirements:

- ✓ to drive a car [§ 521.021, Transportation Code, states that a person “may not operate a motor vehicle on a highway in this state unless the person holds a driver's license” that has a photo ID]
- ✓ to board an airplane [TSA “What you Need: government-issued photo ID”]
- ✓ to buy alcohol or tobacco [see §109.61 and Chapter 106, Alcoholic Beverages Code]
- ✓ to obtain a marriage license [§2.005 of the Family Code requires proof of identity and age for the issuance of marriage license.]
- ✓ to be a licensed doctor [§ 155.0031 of the Occupations Code requires identifying documents, including photographs, for the licensure of doctors.]
- ✓ to check out a library book [the City of Dallas, for example, requires name and address verification for a library card]
- ✓ to purchase products containing ephedrine or pseudoephedrine (most commonly known as Sudafed). Furthermore, in order to purchase the cold medicines, the person making the purchase must show a Driver's License or other photo ID indicating the person is over sixteen years of age. [Chapter 486, Health & Safety Code]

[NOTE: House Bill 164, 79R, passed the House on May 13, 2005, with a record vote of 143 to 1.]

Other, more mundane activities like renting a DVD or membership in bulk retail clubs like Costco or Sams Club, require identification.

9. Photo identification has bipartisan support.

The bipartisan Commission on Federal Election Reform chaired by President Jimmy Carter and former Secretary of State James Baker III issued 87 recommendations for ensuring both equal access to elections *and* election integrity. Among the 87 recommendations, **the Commission recommended requiring photo identification of voters at polling places.**

The Commission's final report reads:

“The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.”

10. HB 218 enhances the integrity of elections because existing identification requirements for voting is grossly insufficient.

Chapter 63 of the Election Code lays out the requirements for accepting a voter at a polling place. §63.001(b) requires that voters present their voter registration certificate. Currently, the voter registration certificate is considered proof of identification. §63.0101 lists identification that is acceptable in lieu of the voter registration certificate (if the voter is on the list of registered voters). That lists includes a driver's license and official government mail.

The Office of the Secretary of State, which oversees elections in Texas, confirms that verification of voter registration information goes no further than the honor system. In a June 15, 2006 letter the Secretary of State's office states:

“Texas relies on the applicant to provide accurate/truthful information on his or her voter registration application. To the extent that an applicant must sign the application verifying that he or she has met the qualifications to register and that he or she has provided accurate/truthful information, the application is processed on those merits.”

That admission alone is sufficient basis for legislative action. House Bill 218 allows poll workers to verify voters' information.

[Source: Ann McGeehan, Director of Elections, Secretary of State; letter dated June 15, 2006]

11. Seven other states have photo identification requirements.

Arizona, Florida, Hawaii, Indiana, Louisiana, Ohio, South Dakota all require photo identification for voting. Each state's requirement follows:

Arizona

State Statute: §16-579A

Every qualified elector shall present one form of identification that bears the name, address and photograph of the elector or two different forms of identification that bear the name and address of the elector.

Florida

State Statutes: §97.0535(3)(a) and §101.043

The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required.

Hawaii

State Statute: §11-136

Every person shall provide identification if so requested by a precinct official. Pollworkers request photo ID with a signature. Acceptable types of ID are not specified by law.

Indiana

State Statutes: §3-5-2-40.5, 3-10-1-7.2 and 3-11-8-25

A voter who desires to vote an official ballot at an election shall provide proof of identification. Specific forms of ID are not listed. ID must be issued by the state of Indiana or the U.S. government and must show the name and photo of the individual.

Louisiana*State Statute: §18:562*

Each applicant shall identify himself, in the presence and view of the bystanders, and present identification to the commissioners. Acceptable ID: Louisiana driver's license, Louisiana special ID card, or other generally recognized picture identification.

Ohio*State Statutes: §3503.16(B)(1)(a) and 3505.18(A)(1)*

All voters must provide to election officials at the polling place on the day of an election proof of the voter's identity. Also applies to voters requesting and voting an absentee ballot.

South Dakota*State Statute: §12-18-6.1 and 6.2*

When a voter is requesting a ballot, the voter shall present a valid form of personal identification.

Litigation based on these photo identification laws:

- On October 20, 2006, the U.S. Supreme Court upheld Arizona's photo ID requirement and requirements that people registering to vote prove their U.S. citizenship. This ruling vacated an October 6 decision by the 9th Circuit Court of Appeals that suspended Arizona's requirements pending further litigation. *
- Indiana's photo ID law was upheld by 7th Circuit U.S. Court of Appeals on January 4, 2007. *

[Source on other states' laws and litigation: National Conference of State Legislatures]

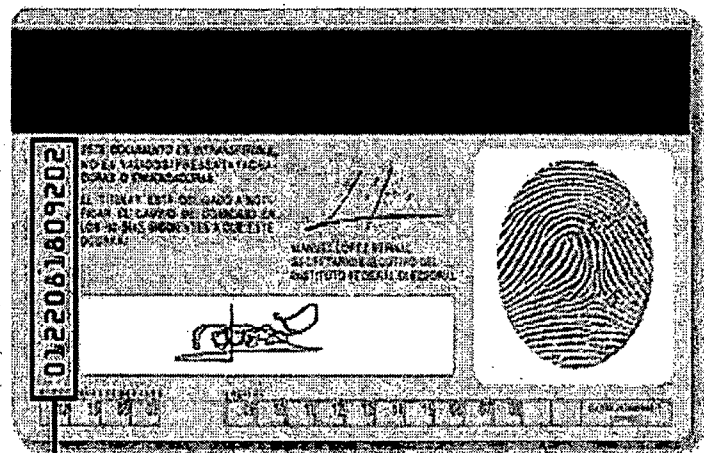
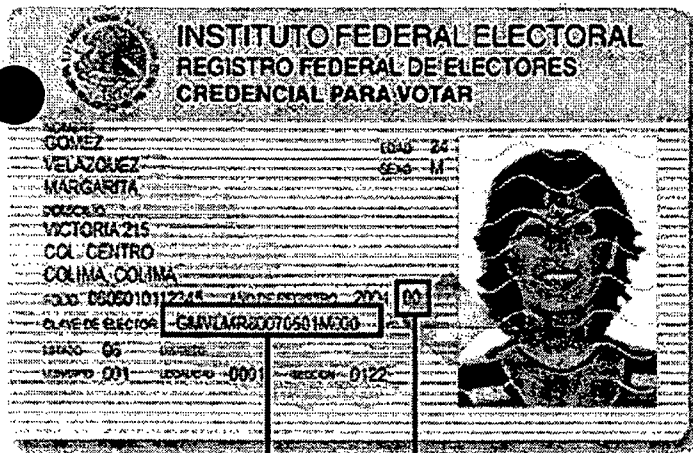
12. Other nations have strict voter identification requirements.

Canada, France, Germany, Haiti, Italy, Mexico, Poland, Britain, India and South Africa all have photo identification requirements for voting. *

In a July 10, 2006 editorial, columnist John Fund described the Mexican system:

Mexico has developed an elaborate system of safeguards to prevent voter fraud. Absentee ballots, which are cast outside the view of election officials and represent the easiest way to commit fraud, are much harder to apply for than in the U.S. Voters must present a valid voter ID card with a photo and imbedded security codes. After they cast a ballot voters--just like those famously pictured in Iraq last year--also have a finger or thumb dipped in indelible purple ink to prevent them from voting again.

See the next page for an image of the Mexican voter identification card:



1. Clave de Elector

2. Número de emisión

3. Número vertical ►(OCR)

Se mostrará la información de tu situación registral al: 15 de febrero de 2007.

The photo on this card is also on the voter rolls before the Mexican clerks, giving three points of reference for verification of a potential voter's identity: the individual, the voter identification card, and the image of the individual on the vote rolls. See the image below from the Instituto Federal Electoral (Federal Election Institute) website:



The Instituto Federal Electoral (Federal Election Institute) in Mexico website lists the following statistics: 94.5% of all Mexican citizens who are eligible to vote are registered; 91.9% have a voter ID-card. According to the American Enterprise Institute, since the enactment of Mexico's voter identification laws, turnout has increased: "68% of eligible citizens have voted, compared to only 59% in the three elections prior to the rule changes." This belies the argument that voter identification laws disenfranchise individuals or negatively impact voter participation. *

[Sources: John Fund, Opinion Journal; American Enterprise Institute; Instituto Federal Electoral (Mexico)] *

Appendix A:

Harris County, Nov. 2006 General Election					
Votes Cast by 65 and older population					
Total Votes	600,512				
65+ Voters	125,221	»		<u>125,221</u>	
			In Person, Early:	59,378	
			By Mail	19,179	
			In Person, Election Day	46,664	
Percent	20.85237				
			Percent in Person, Early	47.41856	
			Percent by Mail	15.31612	
			Percent in Person, Election Day	37.26531	
			Number Voting in Person (early and election day):	106,042	
			Percent Voting in Person:	84.68388	
<u>Voter 65+ WITH Drivers License:</u>					
125,221	65+ voters				
115,926	hard match against DPS DL database				
92.58	Percent of 65+ voters (Nov 2006 General) WITH a drivers license				

Appendix B:

Dallas County, November 2006 General Election			
Votes Cast by 65 and older population			
Total Votes:	405,749		
65+ Voters:	84,746	»	<u>84,746</u>
		In Person, Early:	42,186
		By Mail	10,593
		In Person, Election Day	31,916
Percent:	20.88631		
		Percent in Person, Early	49.77934
		Percent by Mail	12.49971
		Percent in Person, Election Day	37.66077
		Number Voting in Person (early and election day):	74,102
		Percent Voting in Person:	87.44012

HB 218: Voter Identification Fact Sheet

➤ **Bi-Partisan Support for Photo Identification**

The Commission on Federal Election Reform, chaired by President Jimmy Carter and former Secretary of State James Baker, recommends requiring photo identification at polling places.

Source: Commission on Federal Election Reform (Jimmy Carter, James Baker, et al)

➤ **Photo identification is prevalent among the state voting age population, including the elderly.**

Registered Voters (Nov, 2005)	12,577,545
Age 18+ Driver's Licenses (fy2005)	14,429,377
Texas ID Cards (2006)	3,960,249

- 73% of the age 79 and older population has a valid drivers license (63% of the age 85+ population have a valid DL).
- Senator Carona filed Senate Bill 180 this session requiring testing of elderly drivers. The very need for such a law underscores the fact that a significant majority of senior Texans have drivers' licenses.
- Of the 125,221 sixty-five and older voters in Harris County (General Election, Nov. 2006), **92.58% already hold a drivers license.**

Sources: Office of Sec. of State, DPS Drivers License Division, Tx State Data Center, Harris County Tax Assessor-Collector Office

➤ **The voter registration certificate is insufficient as proof of identity**

The Secretary of State readily admits that there is no verification of the information provided by voter registration applicants.

Source: Texas Secretary of State letter dated June 15, 2006;

➤ **Photo Identification is necessary to purchase certain cold medicines & get a marriage license**

As of August 1, 2005, photo identification is required to purchase products containing ephedrine or pseudoephedrine (i.e. Sudafed). §2.005, Family Code requires proof of identity and age for the issuance of a marriage license.

Per: House Bill 164, 79th Legislature [Chapter 486, Health & Safety Code]; §2.005 of the Family Code

➤ **State law has even more stringent ID requirements to access Medicaid.**

Texas Government Code, Section 531.1063 requires smart cards and biometric readers that reside at the point of contact with Medicaid providers, recipients, participating pharmacies, hospitals, and appropriate third-party participants.

➤ **Seven States with a Photo Identification Requirement:**

Arizona, Florida, Hawaii, Indiana, Louisiana, Ohio, South Dakota

Source: National Conference of State Legislatures, updated February 1, 2007